

(2020) 06 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (C) No. 647 Of 2020, 8278 Of 2018

Barak Valley Hills Tribes Development Council

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 166(1), 166(2)

Citation : (2020) 06 GAU CK 0013

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : D P Borah, S S Dey

Final Decision : Dismissed

Judgement

1. Heard Mr. M Nath, learned counsel for the petitioners in WP(C)No.8278/2018 and Mr. DP Borah, learned counsel for the petitioner in

WP(C)No.647/2020. Also heard Mr. D Mazumdar, learned senior counsel assisted by Mr. R Dhar, learned Government Advocate for the respondent

authorities.

2. The Sarania Kachari Development Council (for short, SKDC) and the Gorkha Development Council (for short, GDC) being the two writ petitioners

in WP(C)No.8278/2018 were constituted (reconstituted) respectively, by the Notification dated 14.01.2016 of the Additional Chief Secretary to the

Government of Assam in the WPT & BC Department in respect of the SKDC and by the Notification dated 07.01.2016 in respect of the GDC. In

fact the SKDC was initially constituted by the Departmental Notification No.TAD/BC/491/07/122 dated 20.10.2010, whereas the GDC was

constituted by the Departmental Notification No.TAD/BC/491/07/120 dated 11.10.2010 and by the Notification No.TAD/BC/718/2015/13 dated

14.01.2016 and Notification No.TAD/BC/728/2015/10 dated 07.01.2016, respectively, they were reconstituted. On the other hand, the Barak Valley

Hills Tribes Development Council (for short, BVHTDC) which is the petitioner in WP(C)647/2020 was initially constituted by the Notification No.

TAD/BC/491/07/103 dated 22.02.2011 and was reconstituted by the Notification No. TAD/BC/802/2015/9 dated 13.02.2016.

3. The two writ petitions are being taken up together inasmuch as, the issues involved in both the writ petitions are same and can be adjudicated by a

common judgment and order. In both the writ petitions, the petitioners are aggrieved by the Notification No.TAD/BC/477/2011/75 dated 12.07.2018 of

the Additional Chief Secretary to the Government of Assam in the WPT & BC Department by which the Clause 3 of the earlier Notification

No.TAD/BC/477/2011/56-B dated 21.05.2014 stood amended and the modified Clause 3 as provided therein was brought in force.

4. Clause 3 in original as appeared in the Notification No.TAD/BC/477/2011/56-B dated 21.05.2014 is extracted as below:

â??Clause 3 (in original)

Term of Office:

(i) The term of office of the Council shall be as the Government of Assam may decide from time to time, but shall not exceed five years. The term of

office shall be reckoned from the date of notification constituting the Council.

Provided that, if the Government is of the opinion that circumstance exist, whereby the orderly conduct of business in the Council is not possible, the

Government may by notification dissolve the Council.

Provided further that Govt. may if it is satisfied that circumstances exist which render reconstitution of the Council, as provided, impracticable, extend

the term for a period not exceeding one year.

(ii) The Chairman and the Vice Chairman of the Council shall cease to hold their office forthwith, if he/she, for any reason, ceases to be a member.

(iii) The Chairman, Vice Chairman or a Member shall also cease to be a member in the event of his/her death.â??

5. By the Notification No.TAD/BC/477/2011/75 dated 12.07.2018, the earlier Clause 3 stood deleted and the modified Clause 3 was brought in which

is extracted as under:

â??Clause 3 (as modified)

Term of Office

(i) The Development Councils shall function at the pleasure of the Government of Assam.

(ii) The Chairman/Vice-Chairman and members of the Councils shall hold their position in the Councils at the pleasure of the State Government. The

State Government may remove/replace the Chairman/Vice Chairman or any member of any Council at any time.â??

6. A reading of the Clause 3 in original as found in the Notification of 21.05.2014, makes it discernible that the term of office of the Development

Councils shall be as the Government of Assam may decide from time to time, but shall not exceed 5(five) years, with a proviso that if the Government

is of the opinion that circumstance exist whereby the orderly conduct of business in the Councils is not possible, the Government may by Notification

dissolve a Council. The second proviso to the Clause 3 in original also provided that if the Government is satisfied that circumstances exist which

render reconstitution of the Councils to be impracticable, it may extend the term for a period not exceeding one year.

7. The modified Clause 3 as amended by the Notification dated 12.07.2018 makes it discernible that after the modification by which Clause 3 in

original was amended, the Development Councils shall now function at the pleasure of the Government of Assam.

8. The petitioner Councils which were reconstituted by the Notifications dated 14.01.2016, 07.01.2016 and 13.02.2016, respectively, have assailed the

Notification dated 12.07.2018 by which the afore-stated amendment was brought in, meaning thereby the Notification by which the Clause 3 in original

stood deleted and the modified Clause-3 was brought in providing for that the Development Councils shall now function at the pleasure of the

Government of Assam.

9. Mr. M Nath, learned counsel for the petitioners assails the modification brought in to Clause 3 by the Notification dated 12.07.2018 on the ground

that firstly, the requirement of Article 166(1) of the Constitution had not been complied with; the second requirement of Article 166(2) had also not

been complied with; and thirdly, the amendment brought in by the Notification dated 12.07.2018 being prospective in nature, the amended provisions

incorporated therein would not be applicable to the petitioner Development Councils, inasmuch as, they came into existence by the reconstitution in the year 2016 i.e. prior to the amendment having been brought in.

10. Mr. D Mazumdar, learned senior counsel for the respondent authorities on the other hand contends that the provisions of Articles 166(1) and

166(2) of the Constitution have been duly complied with and as such, no infirmity can be found in the Notification from the said point of view.

11. As regards the contention of the petitioners that the amendment brought in by the Notification of 12.07.2018 would be prospective in nature. Mr.

Mazumdar, learned senior counsel, in principle, agrees to the said contention, but submits that the amended Clause 3 would be applicable to the

petitioner Development Councils on and from the date on which the amendment was brought in, i.e. 12.07.2018.

12. According to the learned senior counsel there is no principle of law available which provides that in the matters of administrative decisions of the

State Government, the law which was in force when the Councils were reconstituted would continue to be applicable to such Councils all along till the

Council itself comes to its natural end. In other words, it is the submission of Mr. D Mazumdar, learned senior counsel that on and from the date when

the amendment was brought in the amended Clause 3 would be applicable to the petitioners and merely because on the date when the Councils were

reconstituted, the Clause 3 in original was in force and, therefore, it cannot be that the original Clause 3 would continue to remain applicable to the

petitioners even after the amendment was brought in, till such time the Council comes to its natural end.

13. With regard to the contention that the provisions of Article 166(1) of the Constitution had not been followed while issuing the Notification dated

12.07.2018, we take note of that Article 166(1) inter alia provides that all executive action of the Government of a State shall be expressed to be taken

in the name of the Governor.

14. While interpreting the provisions of 166(1) of the Constitution, the Supreme Court in *Dattatreya Moreshwar Pangarkar Vs. The State Of Bombay*

And Others reported in 1952 AIR 181 and *R. Chitralekha & Anr Vs. State Of Mysore & Ors* reported in 1964 AIR 182 3 inter alia held that Article

166(1) does not prescribe as to how an executive action of the Government is to

be performed. The provision only prescribes the mode in which such action of the Government is required to be expressed i.e. in the name of the Governor.

15. In the instant case, we have taken note of that the Notification dated 12.07.2018 had been made in the name of the Governor and, therefore, we are of the view that the requirement of Article 166(1) of the Constitution had been duly complied with.

16. With regard to the other allegation that the requirement of the Article 166(2) of the Constitution had also not been complied with, we take note of that Article 166(2) requires that all such orders and other instruments made and executed in the name of the Governor shall be authenticated in such a manner as may be prescribed in the Rules to be made by the Governor.

17. In this respect, Mr. D Mazumdar, learned senior counsel has produced the records in original which contains the procedure that was adopted by the respondent authorities in issuing the Notification dated 12.07.2018. A reading of the records show that the process adopted by the respondent

authorities was that the amendment was initiated from the Department concerned and was placed before the Judicial Department and thereafter

placed before the Chief Minister, the Departmental Minister, Chief Secretary and the Additional Chief Secretary, who had all given their approval to

the proposed amendment. Thereafter, the amendment was also placed in the meeting of the Cabinet held on 01.06.2018 and the Cabinet had also

approved the amendment. From the procedure followed by the respondent authorities we can conclude that the requirement of Article 166(2)

inasmuch as, the orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be

specified in the Rules to be made by the Governor had also been duly complied with in the present case.

18. With regard to the third contention of the petitioners that the amendment brought in by the Notification dated 12.07.2018 would be prospective in

nature, and, therefore it cannot have its applicability to the petitioner Development Councils, who were reconstituted in the year 2016, we take note of

that the law of prospectivity has been settled in a catena of decisions and which had very eloquently been depicted in page 581 of the Principles of

Statutory Interpretation by Justice GP Singh 14 th Edition which is extracted as

below:

“Every statute, it has been said, observed Lopes L.J., which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.”

19. The impugned amendment having the effect of changing the tenure of the Development Councils provided by the original Clause 3 in original of the Notification dated 21.05.2014 would be at the best be of the nature which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions already past, and, therefore, it must be presumed to be intended not to have a retrospective effect. By following the proposition of law provided in the principles of Statutory Interpretation at Page 581 of Justice GP Singh 14th Edition, we are of the view that the amendment brought in by the Notification dated 12.07.2018 cannot be said to have a retrospective effect meaning thereby that the amendment would be prospective in nature.

20. But having said so, we examine the submissions made by Mr. M Nath, learned counsel who has led the arguments on behalf of the petitioners.

The core submission of Mr. M Nath, learned counsel is that the petitioner Development Councils having been reconstituted in the year 2016 meaning thereby that they having come into existence in the year 2016, they would continue to be governed by Clause 3 in original and not by the modified/amended Clause 3 as provided in the Notification dated 12.07.2018. If we intend to agree with Mr. M Nath, learned counsel for the

petitioners, and test the said submission, the consequent thereof would be that irrespective of the amended/modified Clause 3 brought in by the

Notification dated 12.07.2018, the petitioner Development Councils would continue to be governed by the Clause 3 in original as provided in the

Notification dated 21.05.2014. But at the sametime, we also have to take note of that by the amendment of 12.07.2018, the Clause 3 in original had

been obliterated and it is no longer found in the statute book. In the circumstances, if we accept the contention of Mr. M Nath, learned counsel for the petitioners, we have to make a declaration that the petitioner Development

Councils would continue to be governed by Clause 3 in original, although on facts, the same has been obliterated and made non-existent in the statute book. Such submission if accepted would not only be fallacious but would also render any such declaration to be impracticable and unimplementable, inasmuch as, the petitioner cannot be declared to be governed by a provision of law which has become non-existent in the meantime. Accordingly we are unable to accept even the third contention raised by Mr. M Nath, learned counsel for the petitioners.

21. But having said so, we take note of the submission of Mr. D Mazumdar, learned senior counsel that as per the amended/modified Clause 3, the Development Councils shall now function at the pleasure of the Government of Assam. In other words, we are to understand that in order to determine the tenure of the Development Councils, the same shall now be subjected to the pleasure of the Government of Assam meaning thereby that the doctrine of pleasure has been incorporated for the purpose.

22. The concept of doctrine of pleasure has been discussed in detail by the Constitution Bench of the Supreme Court in *B.P. Singhal vs Union Of India & Anr* reported in (2010) 6 SCC 331. The relevant propositions laid down by the Supreme Court in paragraphs 22, 33 and 34 of the aforesaid pronouncement are extracted as below:

22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good.

33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where rule of law prevails, there is nothing like unfettered discretion or unaccountable

action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the fundamentals of constitutionalism". Therefore in a constitutional set up, when an office is held during the pleasure of any Authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.â??

â??34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an Authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the Authority, but can only be for valid reasons.â??

23. As provided by the Supreme Court, there is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is to be understood that the discretionary powers under the doctrine of pleasure would necessarily and obviously be exercised reasonably and for public good, where rule of law prevails and there is nothing like an unfettered discretion or unaccountable action, although the degree of scrutiny and the need for reason may vary, but nonetheless the need for reason to exercise discretion under the doctrine of pleasure do remains in existence.

24. But nonetheless, when in a constitutional set up, an office is being held during the pleasure of any authority and if no limitations or restrictions are

placed on the "At Pleasure" doctrine, it would mean that the holder of the office can be removed by the authorities at whose pleasure they held

the office at any time without notice and without assigning any cause. But at the sametime, the doctrine of pleasure does not give the authority a

licence to act with unfettered discretion, arbitrarily, capriciously or whimsically. Although the removal of the person holding the office may be at the

pleasure of the authority concerned without there being any requirement to give any notice or hearing to the person so removed, but such withdrawal

of pleasure cannot be at the sweet will, whims and fancies of the authorities and is to be acted only for a valid reason.

25. By following the aforesaid propositions laid down by the Supreme Court in paragraphs 22, 33, 34 of B.P. Singhal (supra) we uphold the

amendment provided in the Notification dated 12.07.2018 as regards the amended/modified Clause 3 brought in by the said Notification, but at the

same time provide that the exercise of the doctrine of pleasure for the purpose of removal or determining the tenure of the Development Councils

shall be subjected to the restriction provided in paragraphs 22, 33, and 34 of B.P. Singhal (supra), which has been indicated hereinabove.

26. Writ petition stands dismissed but subject to the aforesaid observation as regards the manner in which the doctrine of pleasure may be exercised

by the State Government in respect of the Development Councils.

27. Interim order passed earlier stands vacated.